

DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 99-0634

SALES AND USE TAX

FOR TAX PERIODS: 1996-1997

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1. Sales and Use Tax: All Terrain Vehicles

Authority: IC 6-2.5.5-2, IC 6-8.1-5-1 (b), IC 6-2.5-3 –2 (a)(3), 45 IAC 2.2-5-3 (e) (3), 45 IAC 2.2-5-1(c)(3), 45 IAC 2.2-5-1 (a), 45 IAC 2.2-5-1 (a), Gross Income Tax Division v. National Bank and Trust Co., (1948) 226 Ind. 298, 79 N.E. 2d 651.

Taxpayer protests the assessment of gross retail tax on purchases of two all terrain vehicles.

Statement of Facts

Taxpayer is a Kentucky tree, grain and cattle farmer. In 1996 and 1997 he bought all terrain vehicles from an Indiana dealership. After an audit of the Indiana dealership, the Indiana Department of Revenue assessed gross retail tax on Taxpayer's purchases of the all terrain vehicles. Taxpayer protested the assessment. A hearing was held and Letter of Findings was issued on September 1, 2000. A rehearing was requested and granted. More facts will be provided as necessary.

1. Sales and Use Tax:

Discussion

Pursuant to IC 6-2.5-3-2 (a), Indiana imposes an excise tax on tangible personal property stored, used, or consumed in Indiana. A number of exemptions are available from use tax. All exemptions must be strictly construed against the party claiming the exemption. Gross Income Tax Division v. National Bank and Trust Co., (1948) 226 Ind. 298, 79 N.E. 2d 651. Taxpayer contends that the purchases of the all terrain vehicles qualify for exemption pursuant to the agricultural exemption found at IC 6-2.5-5-2 as follows:

- (a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.

This exemption applies to “those persons occupationally engaged in producing food or agricultural commodities for sale.” 45 IAC 2.2-5-1 (a). Taxpayer is engaged in the growing of grain, cattle and oak trees for sale. Therefore, Taxpayer is one of the persons who can purchase equipment which qualifies for this exemption. The statute states that the exemption applies to machinery that is directly used in the direct production of agricultural commodities. To qualify for this exemption, the equipment “must have an immediate effect on the article being produced.” 45 IAC 2.2-5-1 (a). Machinery meets this test “if it is an essential and integral part of an integrated process which produces food or an agricultural commodity.” 45 IAC 2.2-5-1 (a). If equipment is used in both an exempt and non exempt manner, it qualifies for exemption in proportion to the amount of exempt use. 45 IAC 2.2-5-1 (c) (3). The issue to be determined is whether any or all of the use of the all terrain vehicles qualifies for exemption.

The first all terrain vehicle was purchased to replace a tractor. The second all terrain vehicle was purchased to replace the first all terrain vehicle after it was of no further use. The all terrain vehicles look like golf carts. They have no cab, turn signals or brake lights. They cannot legally be driven on the public highways.

Taxpayer provided the Department with a breakdown of the various uses of the all terrain vehicles and the percentage of time the all terrain vehicles were used in each of the functions. First, the all terrain vehicles are used twenty per cent (20%) of the time to clear new growth and weeds from the edges of fields. The field edges are not used to produce food. Therefore, this use does not qualify for exemption from the sales and use tax.

Taxpayer used the all terrain vehicles another twenty per cent (20%) of the time during the planting and fertilizing process. Therefore, this use qualifies for the agricultural exemption from sales and use tax.

Two to three times per growing season Taxpayer used the all terrain vehicles to spray crops with chemicals to eliminate weeds. This twenty per cent (20%) use of the all terrain vehicles qualifies for exemption.

Taxpayer also used the all terrain vehicles ten per cent (10%) to clear new growth and weeds from the edges of pastures. The edges of the pastures are not used to produce food. Therefore, this use does not qualify for exemption.

Ten per cent (10%) of the time, Taxpayer used the all terrain vehicles to transport tools, fuel and parts. This is clearly a taxable use of the vehicles since it does not directly affect the process of growing trees, cattle and grain.

Taxpayer also used the all terrain vehicles to construct and check fencing. The exempt use of fencing is clarified at 45 IAC 2.2-5-3 (e) (3) as follows:

Fences, fencing materials, gates, posts, and electric fence chargers are exempt only if the same are purchased for use in confining livestock during the production processes of breeding, gestation, farrowing, calving, nursing, or finishing. . . Fencing materials are also taxable if the fence is used only as a partition fence between adjoining landowners or as a means to keep wildlife, stray animals, or trespassers from entering cropland or farm premises.

In this case Taxpayer used the fencing ten per cent (10%) of the time to keep cattle in the appropriate areas for their growth. Pursuant to the Regulation, this use of fencing qualifies for exemption. Taxpayer also used the all terrain vehicles five per cent (5%) of the time to run fence around the property lines to keep animals out of the woods. Pursuant to the Regulation, this is a taxable use of fencing.

Taxpayer's final use of the all terrain vehicles was to run the timber grounds to keep timber thieves at bay. This five per cent (5%) use of the all terrain vehicles is not directly related to the direct production of agricultural products and does not qualify for exemption.

Finding

Taxpayer's protest is sustained for fifty per cent (50%) of the use of the all terrain vehicles and denied for fifty per cent (50%) of the use of the all terrain vehicles.